

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ROBERT A. LINDNER

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Appeal No. 95-0319  
Application 07/916,180<sup>1</sup>

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HEARD: April 7, 1997

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Before METZ, JOHN D. SMITH and WARREN, Administrative Patent Judges.

JOHN D. SMITH, Administrative Patent Judge.

**ON REQUEST FOR REHEARING**

Appellant requests rehearing of our decision entered December 7, 1998 wherein we affirmed the examiner's rejection of the appealed claims under 35 U.S.C. § 103 principally based

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<sup>1</sup> Application for patent filed July 17, 1992. According to applicant, this Application is a division of Application 07/554,790, filed July 18, 1990, now Patent No. 5,134,185, issued July 28, 1992.

on the disclosures of Washecheck and Nakamura. We have carefully considered appellant's remarks in his request. However, we decline to modify our decision in any respect.

In regard to the issues concerning the claimed triglyceride ester component of appellant's composition and method, we made the following statement at page 3 of our decision:

However, the examiner's contention (answer, page 15) that such triglyceride esters fall within the scope of Washecheck's high molecular weight ester lubricants has not been challenged (emphasis added).

Accordingly, appellant's belated arguments in his request concerning this issue are untimely and have not been considered. See 37 CFR § 1.192(a).

Appellant's argument that Nakamura's teaching of using a granular lead stabilizer "negates the homogeneity" of appealed claims 1 and 13 misconstrues the basis of the rejection, since Nakamura is relied upon for the teaching that appellant's claimed triglyceride component is a known and conventional lubricant for polyvinylchloride resins which is contemplated by Washecheck as an "other additive" lubricant which is useful in Washecheck's composition. See Washecheck at column 4, lines 59-68.

Appellant's argument (request, page 1, last paragraph) that implies that the addition of a triglyceride ester oil lubricant would not form a homogeneous mixture in Washecheck's homogeneous composition ignores the fact that the analogous calcium salts (which appellant refers to as soaps) fuse and coalesce with paraffin wax into a "homogeneous taffy-like material" in Washecheck's process.

See Washecheck at column 3, lines 1-3. Apparently, counsel for appellant believes that triglyceride ester oils and paraffin waxes are incompatible. No objective evidence is of record to support this contention.

Appellant's argument that Washecheck "does not teach a method to obtain rigid polyvinylchloride" (request, page 1, lines 15 and 16) overlooks the disclosures in Washecheck at column 4, lines 21-24 that his lubricant compositions are useful as additives for "polyvinylchloride extrusion formulations" and the fact that, as early as 1959, the use of "rigid poly (vinyl chloride)" was "growing rapidly in the United States". See Golding at page 415 and our decision at page 5.

Accordingly, appellant's request that we "vacate" our decision is denied. Appellant's request for oral hearing is also denied. No provision of the rules provides for an oral rehearing.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

**DENIED**

ANDREW H. METZ  
Administrative Patent Judge

JOHN D. SMITH  
Administrative Patent Judge

CHARLES F. WARREN  
Administrative Patent Judge

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